

**REMARKS/ARGUMENTS**

In view of the foregoing amendments and the following remarks, the applicants respectfully submit that the pending claims comply with 35 U.S.C. § 101, § 112 and are not rendered obvious under 35 U.S.C. § 103. Accordingly, it is believed that this application is in condition for allowance. **If, however, the Examiner believes that there are any unresolved issues, or believes that some or all of the claims are not in condition for allowance, the applicants respectfully request that the Examiner contact the undersigned to schedule a telephone Examiner Interview before issuing any further action on the merits.**

The applicants will now address each of the issues raised in the outstanding Office Action. Before doing so, however, both the undersigned and Darren Kang would like to thank Examiner Lastra for courtesies extended during a telephone interview on August 17, 2009 (referred to as "the telephone interview"). The telephone interview is summarized here.

**Telephone Interview Summary**

This statement summarizes the issues discussed during the August 17, 2009 telephone interview. This Interview Summary is presented in the format disclosed in MPEP § 713.04 as suggested by the Patent Office.

**Date of Interview:** August 17, 2009

**Type of Interview:** Telephonic

**Name of Participant(s) :**

- **Examiner:** Daniel LASTRA
- **For Applicants:** John C. POKOTYLO  
Darren KANG

**A. Exhibit(s)/Demonstration(s) :** None

**B. Discussed claim(s) :** 1, 17, 21 and 54

**C. Discussed Prior Art(s) :**

- U.S. Patent No. US 6,324,519 ("the Eldering patent")
- U.S. Patent Application Publication No. US 2002/0116313 ("the Detering publication")

**D. Principal Proposed Amendments:**

- Amendments to claims 17 and 21 were discussed to overcome the rejection under 35 U.S.C. § 101.

**E. Principal Arguments:**

- The applicants' representatives described the claimed invention, their understanding of the teachings of the Eldering and Detering references, and differences between the claimed invention and the teachings of the cited references. Specifically the applicants' representatives stated that the rejection of claims 1, 17, 21, 34, 50 and 54 under 35 U.S.C. § 103:

(1) did not address the distinguishing features of claims 21 and 54 (e.g., multicasting requests for offers in **opposite direction** from claims 1 and 34, that is, to at least two content owners); and

(2) did not address (e.g., multicasting, by a proxy, ad spot requests for offers) distinguishing features of claim 1 which are not disclosed in the cited references.

**F. Other Pertinent Matters:**

- None

**G. General Results/Outcome:**

- Examiner Lastra stated that he appreciated that the cited art did not appear to include the various claim features discussed. He also stated that he will consider these differences when he receives the response to the outstanding Office Action.

**Rejections under 35 U.S.C. § 101**

Claims 17-33 stand rejected under 35 U.S.C. § 101, as being directed to non-statutory subject matter. Specifically, the Examiner contends that these claims fail to meet the statutory requirements because "the sending [in claim 17, for example] is not performed by the content provider because it recites 'with'." (Paper No. 20090523, page 3)

The applicants respectfully traverse this rejection with amendments made to claims 17 and 21-25 and request that the Examiner reconsider and withdraw this ground of rejection.

**Rejections under 35 U.S.C. § 112**

Claims 17-66 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to

particularly point out and distinctly claim the subject matter which the applicants regard as the invention. Specifically, the Examiner contends that some of the rejected claims "recite 'with the' making [the claims] unclear who is performing the action." (Paper No. 20090523, page 3)

First, independent claim 34 already recites the term "by" instead of the term "with"; dependent claims 35-49 directly or indirectly inherit this feature. Second, the applicants respectfully request that the Examiner reconsider and withdraw this ground of rejection regarding claims 17-33 in view of the above amendments made to claims 17 and 21-25. Similarly, claims 50 and 54-58 have been amended to recite the term "by" instead of the term "with". Dependent claims 51-53 and 59-66 directly or indirectly inherit these amended features.

Thus, the claims as amended clarify what is performing various actions.

#### Rejections under 35 U.S.C. § 103

Claims 1-66 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the Eldering patent in view of the Detering publication. The applicants respectfully request that the Examiner reconsider and withdraw this ground of rejection in view of the following.

Before addressing at least some of the patentable features of various claims, exemplary embodiments consistent with the claimed invention are first introduced. Exemplary embodiments consistent with the claimed invention facilitate **dynamic** (real time) **bidding** process (e.g., in which a proxy multicasts offer requests

to advertisers after accepting ad spot availability information). More specifically, as stated in the specification:

These sales, such as via arbitrated offers (e.g., auctioned bids), may be **dynamic**, because many pageviews are not determined **until a user request is received**, and because the winning ad-provider(s) for a pageview might not [be] selected **until the page request is known**. The present invention may do so by (a) **accepting ad spot availability information** from a first party, (b) **multicasting ad spot requests for offers** using the accepted ad spot availability information **to at least two second parties**... [Emphasis added.].

(Paragraph [0013] of the present application) Figures 8A-8C illustrate such an exemplary process. Having introduced an exemplary embodiments consistent with the claimed invention, at least some patentable features of the claimed invention are now discussed.

Independent claims 1 and 34 are not rendered obvious by the Eldering patent and the Detering publication at least because the cited references, individually or in combination, do not render obvious (1) **accepting, by a proxy, ad spot availability information** for a pageview to be provided in response to a page request, the ad spot availability information accepted **from a first party**, wherein the first party is not the proxy, and (2) **multicasting, by the proxy, ad spot requests** for offers using the accepted ad spot availability information **to at least two second parties, wherein the at least two second parties include at least two ad networks that are**

*different from the first party and the proxy*, in combination with the other features of these claims.

In rejecting claims 1, 17, 21, 34, 50 and 54, the Examiner concedes that "Eldering does not expressly teach that wherein the first party is not the proxy", but relies on the Detering publication to disclose a proxy different from the content providers. (Paper No. 20090523, page 4) Specifically, the Examiner contends that the Detering publication "teaches a system where a server (see figure 1, item 170) functions as a proxy... ." (Paper No. 20090523, page 4) The Examiner then concludes that:

it would have been obvious ... to know that Eldering's content provider such as cable operator (see col 3, lines 40-65) would function as a proxy by handling a plurality of content providers and a plurality [of] advertisers, as taught by Detering in order that said proxy handles the bidding for placing ads into content providers sites.

(Paper No. 20090523, page 5) The applicants respectfully disagree.

First, in embodiments consistent with claims 1 and 34, the proxy dynamically *multicasts* request for offers *to at least two second parties using the ad spot availability information* (accepted from the first party). By contrast, as discussed during the telephone interview, the server disclosed in the Detering publication does not multicast request for offers, but *automatically bids* for ad spots according to a *previously stored* bidding structure. Specifically, before any bidding process, advertisers in the Detering publication provide an

optimum bidding structure to a moderating, processing, and database unit 70 for automated determination of its bids. (See paragraph [0024] of the Detering publication.) Once this parameter has been stored in unit 70, the unit bids according to this defined parameter and "updates the bid account". It therefore has **no need to multicast request for bids** to a plurality of advertisers, since the information needed to generate bids is **already stored** (See paragraph [0028] of the Detering publication.) As conceded by the Examiner (discussed above), the Eldering patent does not teach a proxy multicasting to a plurality of advertisers.

Further, the conclusion that it would be haven obvious to combine the alleged teachings of the references is not supported by any of the rationales set forth in KSR Int'l Co. v. Teleflex, Inc., 550 U.S. 398 (2007) (See also, Legal Concept of Prima Facie Obviousness, M.P.E.P. § 2142; and Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in KSR International Co. v. Teleflex Inc., OG Notices: 06 Nov 2007.)

Thus, independent claims 1 and 34 are not rendered obvious by the cited references for at least the foregoing reasons. Since claims 2-16 and 35-49 directly or indirectly depend from claims 1 and 34 respectively, these claims are similarly not rendered obvious by the cited references as well.

Regarding the rejection of remaining claims, as noted above in the Telephone Interview Summary, the Examiner appreciated the fact that other independent claims include multicasting request for offers using the

accepted ad availability (accepted from an advertiser; claims 21 and 54) and other independent claims include acts performed by a content provider (claims 17 and 50), different from the features recited in independent claims 1 and 34. The current rejection does not address these distinct features and the applicants respectfully request that the Examiner consider these features accordingly.

Specifically, claims 17 and 50, as amended, recite (1) sending, by a content provider computer system ..., ad spot availability information for a pageview to be provided in response to a page request, to a proxy representing at least two of (i) a first ad network, (ii) a second ad network, (iii) a first ad agency, and (iv) a second ad agency, wherein **the content provider is not the proxy**, and (2) receiving, by the content provider computer system, information concerning at least one ad corresponding to the ad spot availability information from the proxy, wherein the information concerning the at least one ad originates from **an advertiser, and wherein the advertiser is different from the proxy and the content provider**. Exemplary embodiments consistent with the invention of claims 17 and 50 provide a **content provider computer system** that deals with the advertiser through a **proxy** different from the advertiser. Thus, claims 17 and 50 are not rendered obvious by the cited references as discussed above. Since claims 18-20 and 51-53 directly or indirectly depend from claims 17 and 50, respectively, these claims are similarly not rendered obvious by the cited references.

In addition, claims 21 and 54, as amended, recite (1) accepting by a proxy ..., ad availability information



from an advertiser, wherein the ad availability information is associated with an ad to be served, and wherein **the advertiser is not the proxy**, and (2) multicasting, by the proxy, requests for offers using the accepted ad availability information associated with the ad to be served to at least two content owners, wherein **the at least two content owners are different from the advertiser and the proxy**. Exemplary embodiments consistent with the invention of claims 21 and 54 provide a proxy arbitrating an ad to be served between the content owners and the advertiser. The proxy is not the advertiser or the at least two content owners. Thus, claims 21 and 54 are not rendered obvious by the Eldering and Detering references. During the telephone interview, the Examiner seemed to appreciate this difference. Since claims 22-33 and 55-66 directly or indirectly depend from claims 21 and 54 respectively, these claims are similarly not rendered obvious by the cited references.

### Conclusion

In view of the foregoing amendments and remarks, the applicants respectfully submit that the pending claims are in condition for allowance. Accordingly, the applicants request that the Examiner pass this application to issue.

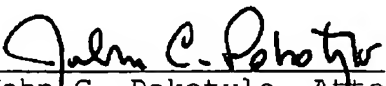
Any arguments made in this amendment pertain **only** to the specific aspects of the invention **claimed**. Any claim amendments or cancellations, and any arguments, are made **without prejudice to, or disclaimer of**, the applicants' right to seek patent protection of any unclaimed (e.g., narrower, broader, different) subject matter, such as by

way of a continuation or divisional patent application for example.

Since the applicants' remarks, amendments, and/or filings with respect to the Examiner's objections and/or rejections are sufficient to overcome these objections and/or rejections, the applicants' silence as to assertions by the Examiner in the Office Action and/or to certain facts or conclusions that may be implied by objections and/or rejections in the Office Action (such as, for example, whether a reference constitutes prior art, whether references have been properly combined or modified, whether dependent claims are separately patentable, etc.) is not a concession by the applicants that such assertions and/or implications are accurate, and that all requirements for an objection and/or a rejection have been met. Thus, the applicants reserve the right to analyze and dispute any such assertions and implications in the future.

Respectfully submitted,

September 3, 2009

  
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